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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 6.8.2007.

Kewal Singh and another .... Appellants.

vs

Ajaib Singh and others .... Respondents.

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.S.S.Bains,Advocate,for the appellants.

Judgment.

R.S.Madan, J.

This regular second appeal is directed against the judgment and decree dated 13.12.2006, passed by the learned Additional District Judge, Jalandhar, whereby she upheld the order of the trial court but modified it to the extent that it is a preliminary decree for partition.

In brief the facts of the case are that the plaintiff Ajaib Singh and defendant no.4 Tara Singh are owners of the suit property to the extent of ½ share each. The plaintiff has constructed a residential house in part of the suit property shown as pink in the site plan attached with the plaint, and has left a vacant portion towards northern side of the suit property. Similarly defendant Tara Singh has also left a vacant portion out of the suit property on the northern side which property is shown as mark ABEFG. It has also been pleaded that defendant no.3 Kashmir Singh (proforma respondent no.3 herein) is proclaiming that he has purchased the same property from Tara Singh. He has occupied the suit property marked as ABEFG illegally and

forcibly and has raised construction thereon. It was pleaded that the plaintiff is entitled to vacant possession of the suit property after removal of malba from there. It was also pleaded that the suit property is joint between the co-owners and the plaintiff intends to have the partition of joint property by metes and bounds. With these pleadings the plaintiff has prayed for a decree of possession and separate possession by way of partition and for permanent injunction.

The suit was contested by the defendants- appellants by filing written statement. They denied and controverted the claim of the plaintiff. Preliminary objections regarding locus standi, maintainability, etc. were taken by them. It was submitted that the plaintiff has already got demarcation of khasra number in dispute vide report dated 9.11.1998 and there is nothing in that report that they have occupied the suit property. It was also submitted that the plaintiff has constructed a residential house and has raised a boundary wall. It was pleaded that the same was constructed way back in the year 1975 and they have also constructed a house in the year 1975. Other allegations were denied.

Defendant no.3 Kashmir Singh has also filed a separate written statement. He submitted that he is joint owner of khasra no.1670 and 1671/1 and he is in exclusive possession over the suit property and residing therein along with defendants no.1 and 2. He further submitted that he has become co-sharer in the disputed property by purchasing it from Tara Singh vide sale deed dated 17.6.1977.

Defendant No.4 in his reply submitted that the property in dispute marked as ABEFG is not a part of khasra no.1670 and 1671/1 and

the same was partitioned between Tara Singh and plaintiff about 28 years back.

On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled for possession as prayed for? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether plaintiff has no locus standi to file the present suit? OPD
4. Whether suit is not maintainable in the present form? OPD
5. Whether plaintiff is barred by his own act and conduct from filing the present suit? OPD
6. Whether suit is time barred? OPD
7. Whether suit is not properly valued? OPD
8. Relief.

Additional issue framed on 18.2.2002:

Whether plaintiff has not come to the court with clean hands?OPD

Additional issue framed on 17.7.2003:

Whether plaintiff is entitled for partition by metes and bounds as detailed and described in head note of plaint?OPP

Parties adduced evidence in support of their claims.

After evaluating evidence of the parties, the learned trial court decreed the suit filed by the plaintiff vide judgment and decree dated 21.7.2005.

Aggrieved by the judgment and decree of the learned trial court, the defendants- appellants filed an appeal before the learned

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Additional District Judge, which was also dismissed with the above said modification to the extent that the judgment and decree of the trial court is a preliminary decree of partition. The appellants, thereafter, came up in regular second appeal, to this court.

It is contended on behalf of the appellants that partition between the parties took place long back and they have constructed their houses on their respective shares. The contention of the learned counsel for the appellants has no force for the reasons that no partition took place between the parties, otherwise it would have reflected in the revenue record. Accordingly the courts below were justified in recording the findings that the disputed land is jointly owned and possessed by the appellants-defendants and plaintiff- respondents.

Moreover, the appellants have challenged the judgments and decrees passed by the courts below in which concurrent findings have been recorded on all the issues in favour of the plaintiff and against the appellants- defendants. For the purpose of entertaining the regular second appeal, it was incumbent upon the appellants to have raised the substantial question of law before this court. The substantial questions of law raised by the appellants in the appeal are questions of fact which cannot be gone into in this regular second appeal. Learned counsel for the appellants also could not point out any misinterpretation of evidence led by the parties by the two courts below.

I see no merit in this appeal and the same is hereby dismissed.

6.8.2007. (R.S.Madan)
vs. Judge.